

RESOLUTION NO. 7888

**RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF PLACERVILLE AUTHORIZING THE EXECUTION
OF AN AGREEMENT WITH PATRICK CLARK CONSULTING
FOR HUMAN RESOURCES AND LABOR RELATIONS SERVICES**

BE IT, AND IT IS HEREBY RESOLVED by the City Council of the City of Placerville that the City Manager is authorized and directed to execute on behalf of the City of Placerville an Agreement for Consultant Services with Patrick Clark Consulting, a copy of which Agreement is attached hereto and by reference made a part hereof.

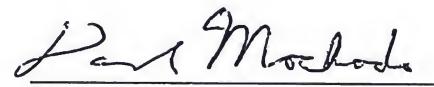
The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Placerville held on April 12, 2011, by Councilmember Hagen, who moved its adoption. The motion was seconded by Councilmember Mattson. A poll vote was taken which stood as follows:

AYES: Acuna, Borelli, Hagen, Machado, Mattson

NOES: None

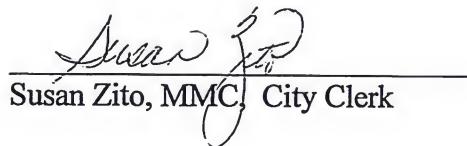
ABSTAIN: None

ABSENT: None



Mayor David Machado

ATTEST:



Susan Zito, MMC, City Clerk

AGREEMENT FOR CONSULTANT SERVICES BETWEEN
THE CITY OF PLACERVILLE
AND
PATRICK CLARK CONSULTING

This is an Agreement between the City of Placerville (hereinafter referred to as "City"), and Patrick Clark Consulting (hereinafter referred to as "PCC"). In consideration of the services to be rendered, the sum to be paid and each and every covenant and condition contained herein, the City and PCC agree as follows:

1. **TERM & TERMINATION of AGREEMENT** – This Agreement will govern all services performed by PCC on behalf of City, commencing with the date PCC first performed services. The dates at the end of this Agreement are for reference only. This agreement may be terminated by either party at any time with thirty (30) days written notice.
2. **SERVICES TO BE PROVIDED BY PCC** – PCC shall provide services listed in Exhibit A. These services shall be collectively known as "PCC Advisory Services." PCC shall provide no legal advice or services. City shall be responsible for the legal ramifications of all advice and documentation generated by PCC for City's use.
3. **COMPENSATION**
 - a. Compensation rates as are set forth in PCC's attached fee schedule attached hereto as Exhibit B and incorporated herein by this reference.
 - b. At the end of each month, PCC shall submit to City an invoice for services provided during the preceding month. The invoice shall include a brief description of the work performed, the dates of work, number of hours worked and payment. City shall pay the invoice within 30 days of its receipt.
4. **STATUS OF RELATIONSHIP** – It is the intent of both parties under this Agreement that PCC, its agents and employees, shall be independent contractors and not employees of the City. This Agreement absolutely excludes any employee-employer relationship between the parties to this Agreement.
5. **INDEMNIFICATION**
 - a. City agrees, to the fullest extent permitted by law, to indemnify, hold harmless, and defend Consultant, its employees, agents and sub-consultants (collectively, Consultant) against any and all costs, losses, liabilities, expenses (including reasonable attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with any claims arising out of the performance of this Agreement, unless the claim arises from the gross negligence or willful misconduct of Consultant as determined by a court or other forum of competent jurisdiction. The City's duty to indemnify, hold harmless, and defend Consultant shall arise immediately upon tender of any matter or claim potentially covered by the City's obligation to indemnify, hold harmless, and defend Consultant under this Agreement.
 - b. This provision shall be in addition to any rights of defense and/or indemnification that Consultant may have under the law and shall survive and remain in effect following the termination of this Agreement

for any reason. Should any part of this provision be determined to be unenforceable, Consultant and City agree that the remainder of the provision shall apply to the maximum extent permitted by law.

6. MEDIATION AND ARBITRATION OF DISPUTES

- a. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Contract shall be submitted to Judicial Arbitration & Mediation Services, Inc. (JAMS), or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration pursuant to the arbitration clause set forth below. Either party may commence mediation by providing to JAMS and the other party a written request for mediation setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or 45 days after the date of filing the written request for mediation, whichever occurs first. The mediation may continue after the commencement of arbitration if the parties so desire. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case. The provisions of this Mediation and Arbitration of Disputes provision may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.
- b. Subject to subsection 6(a) above, any dispute, claim or controversy arising out of or relating to this Contract or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration in Sacramento before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Each party shall pay one-half of all arbitration costs with the understanding that the arbitrator shall, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction, in which case the prevailing party shall be entitled to recover from the other party reasonable costs, fees and expenses (including attorneys' fees) incurred therein or collection of any judgment or award rendered therein.

7. INSURANCE PROVISIONS

During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect the following insurance policies, or, at Consultant's sole option, policies providing equal or better coverage:

- i. State Farm Business Liability Policy # 90-BL-X967-5 – \$1,000,000.00 Business Liability, \$2,000,000.00 Gen Aggregate (Exhibit A)
- ii. State Farm Auto Insurance Policy # 55-B-2697-V71 – \$500,000.00 and Umbrella Policy # 55-BQ-H282-3 - \$500,000.00 (Combined \$1,000,000.00 coverage). (Exhibit B)
- iii. HISCOX Errors & Omissions Insurance Policy # UEA1128907.10 – 2,000,000.00 (Exhibit C)

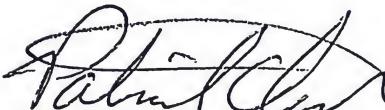
b. Consultant shall require each of its subcontractors to maintain insurance coverages that meet all of the requirements of this Agreement.

c. Consultant agrees that if it does not keep the aforesaid insurance (or equal or better coverage) in full force and effect City may either (i) immediately terminate this Agreement; or (ii) take out the minimum insurance necessary to rectify the lapse and pay the premium(s) thereon at Consultant's expense.

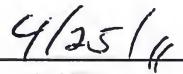
d. At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the policies required by this Agreement are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall file with City's Risk Manager such certificate(s) prior to commencement of work under this Agreement.

e. Consultant shall provide proof to the City's Risk Manager that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage at least two weeks prior to the expiration of the coverages.

f. The general liability and automobile policies of insurance required by this Agreement shall contain endorsements naming City and its officers, employees, agents and volunteers as additional insureds. In addition, Consultant agrees to provide thirty day's prior written notice to City of any failure to renew any such policies of insurance or to replace them with equal or better coverage.



Patrick Clark, Patrick Clark Consulting (PCC)



DATE



M. Cleve Morris, City Manager



DATE

EXHIBIT A
SCOPE OF WORK

- **Labor relations services.**
 - Contract negotiations
 - Contract enforcement
 - Grievances
 - Meet and confers
 - Disciplinary Actions
- Any other human resources or labor relations project requested by City Manager.

EXHIBIT B
2011 FEE SCHEDULE

- All hours worked shall be paid at Consultants normal hourly rate of \$150.00 per hour, in increments of 15 minutes. (REDUCED TO 125.00 PER HOUR UNTIL COST SAVINGS PLANS ARE RESCINDED FOR CITY EMPLOYEES)
- Drive time shall be considered time worked. (Limit 1 hour each way)
- With 30 days' written notice PCC shall be entitled to increase the fees in this fee schedule.